

BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652

DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,  
CHERYL HATCH, KATHLEEN KELLY, ANDREW  
WILKLUND, AND RICHARD KOSIBA--  
PETITION FOR DECLARATORY ORDER

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Public Record

MOTION OF GRAFTON & UPTON  
RAILROAD COMPANY FOR PROTECTIVE ORDER

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Attorney for Grafton &  
Upton Railroad Co.

Dated: August 20, 2012

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SURFACE TRANSPORTATION BOARD**

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**MOTION OF GRAFTON & UPTON  
RAILROAD COMPANY FOR PROTECTIVE ORDER**

In accordance with 49 CFR 1104.14(b), Grafton & Upton Railroad Co. ("G&U") hereby requests the Board, for the reasons set forth below, to enter a protective order substantially in the form attached hereto. The protective order, and the forms of undertaking attached to the order, are similar to those approved by the Board in other proceedings in order to protect confidential information.

Concurrently with the filing of this Motion, G&U is filing, under seal, a highly confidential version of the "Reply of Grafton & Upton Railroad Company to Petition for Declaratory Order". The Reply and the accompanying verified statements and exhibits contain confidential, proprietary and commercially sensitive information. Such information includes confidential contracts and proprietary and commercially sensitive financial information, the public disclosure of which could have adverse impacts on the business of G&U, its customers and other interested parties.

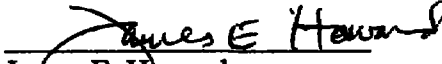
Issuing the proposed order, as the Board has routinely done in similar cases, will further the dual goals of enabling G&U to submit information needed by the Board to

evaluate and reach a decision with respect to the Petition while, at the same time, protecting confidential information from unnecessary public disclosure. Public disclosure of such confidential information is not necessary for the disposition of the Petition. As would be required under the proposed protective order, G&U is also filing a public redacted version of the Reply as well as the confidential version that is being filed under seal.

For the reasons set forth above, therefore, G&U respectfully requests that the Board grant this Motion and enter the protective order attached hereto.

Respectfully submitted,

GRAFTON & UPTON  
RAILROAD CO.

  
James E. Howard  
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Carmel Valley, California 93924  
(831) 659-4112 telephone  
jim@jehowardlaw.com e-mail

Attorney for Grafton & Upton  
Railroad Co.

Dated: August 20, 2012

**Certificate of Service**

I hereby certify that I have served the foregoing Motion as of this 20th day of August, 2012 by causing a copy to be sent by Federal Express to Mark Bobrowski, Blatman, Bobrowski & Mead, LLC, 9 Damonmill Square, Suite 4A4, Concord, Massachusetts 01742.

  
James E. Howard

**PROTECTIVE ORDER**

**1. For purposes of this Protective Order:**

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means traffic data (including but not limited to way bills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other databases, and cost work papers), the identification of shippers and receivers in conjunction with a shipper-specific or other traffic data, the confidential terms of contracts, confidential financial and cost data, confidential divisions of rates, compensation levels and other compensation arrangements, confidential information regarding the appraised value of property, and other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraph 2 or 3 of this Protective Order, and any Confidential Information contained in such documents.

(d) "Proceedings" means those before the Surface Transportation Board ("Board") in STB Finance Docket No. 35652 and any related proceedings before the Board, and any judicial review proceedings arising from STB Finance Docket No. 35652 or from any related proceedings before the Board.

2. If any party to these proceedings determines that any part of a document it submits, discovery request it propounds, discovery response that it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed or served by it in these Proceedings contains Confidential Information or consists of Confidential Documents, then such party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided for hereinafter.

3. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, discovery response it produces, transcript of a deposition or hearing in which it participates, pleading or other paper to be submitted, filed or served in these Proceedings contains shipper-specific rate or cost data, divisions of rates, compensation levels, confidential contracts, confidential cost or financial information, confidential information regarding the appraised value of property or other competitively sensitive or proprietary information, then such party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL". Any information or documents so designated or stamped shall be handled as provided hereinafter.

4. Information and documents designated or stamped as "CONFIDENTIAL" may not be

disclosed in any way, directly or indirectly, to any person or entity except to an individual person who is a party, or to an employee, counsel, consultant, or agent of a party to these Proceedings or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit A to this Protective Order.

5. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any individual person who is a party, or to an individual employee of a party, to these Proceedings, to any employee of a party to these Proceedings that is not an individual person (but rather a corporation, partnership, limited liability company or some other form of business enterprise) or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality undertaking substantially in the form set forth at Exhibit B to this Protective Order.

6. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board whether the submission is designated a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

7. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

8. Designated Material may not be used for any purposes, including without limitation any business, commercial, strategic or competitive purpose, other than the preparation and presentation of evidence and argument in these Proceedings and any related proceedings before the Board, or any judicial review proceedings in connection with these Proceedings or any related proceedings. Any person or entity receiving Designated Material shall at all times keep secure all notes, abstractions or other work product derived from or containing Designated Materials, shall be obligated to maintain the confidentiality of such work product and shall not

disclose or reveal the contents of said notes, abstractions, or other work product after the Designated Material is returned or destroyed pursuant to this Protective Order. Any recipient of any Designated Material protected by this Protective Order shall not disseminate, orally or by any other means, any Designated Material other than as permitted by this Protective Order. Once protections pursuant to this Protective Order have attached to Designated Material, such protection shall not be reduced or waived by further communicating, restating, summarizing, discussing or referring to any Designated Material during the course of these Proceedings.

9. Any person or entity who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of (a) such time as it withdraws from these Proceedings or (b) the completion of these Proceedings, including any petitions for reconsideration, appeals, or remands.

10. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 CFR § 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

11. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than the Board in these Proceedings, unless (a) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not placed in the public docket in the proceeding, or (b) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for a Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require that the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that, if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

12. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless it has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer (a) restrict attendance at the hearing during any discussion of such Designated Material, and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

13. If any party intends to use any Designated Material in the course of any deposition in

these Proceedings, it shall so advise opposing counsel and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 9 of this Protective Order.

14. To the extent that Designated Material is produced by a party in these Proceedings and is held or used by the receiving person in compliance with the provisions of this Protective Order, such production, disclosure, holding or use of the Designated Material and of the data that the Designated Material contains are deemed essential for the disposition of these Proceedings and any related proceedings and will not be deemed a violation of 49 U.S.C. 11904 or of any other relevant provision of the ICC Termination Act of 1995.

15. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

16. Nothing in this Protective Order restricts the right of any person or entity to disclose voluntarily any Confidential Information originated by that person or entity or to disclose voluntarily any Confidential Documents originated by that person or entity, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other person or entity, unless such person or entity has consented in writing to such disclosure.

Exhibit A

UNDERTAKING — CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, have read the Protective Order served on \_\_\_\_\_, 2012 governing the production and use of Confidential Information and Confidential Documents concerning STB Finance Docket No. 35652, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to the Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35652, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with STB Finance Docket No. 35652 or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Protective Order and who have executed Undertakings in the form hereof, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as "CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

\_\_\_\_\_  
[print or type name]

Dated: \_\_\_\_\_

## Exhibit B

## UNDERTAKING — HIGHLY CONFIDENTIAL MATERIAL

I, \_\_\_\_\_, am outside [counsel] [consultant] for \_\_\_\_\_, for whom I am acting in this Proceeding. I have read the Protective Order served on \_\_\_\_\_, 2012 governing the production and use of Confidential Information and Confidential Documents concerning STB Finance Docket No. 35652, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any Confidential Information or Confidential Documents obtained pursuant to the Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Finance Docket No. 35652, any related proceedings before the Surface Transportation Board, or any judicial review proceedings in connection with STB Finance Docket No. 35652 or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Protective Order and who have executed Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to assure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that applicants or other parties producing confidential information or confidential documents shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

\_\_\_\_\_  
OUTSIDE [COUNSEL] [CONSULTANT]  
[print or type name]

Dated: \_\_\_\_\_

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